

the purposes thereof" may include legal and preliminary expenses. This reading and application of the Act seems to me to be reasonable and correct, and therefore my opinion is that the judgment should be affirmed.

There were some minor points raised in the argument in the Court below which seem also to have been correctly dealt with.

The appeal should be dismissed.

**LORD ROBERTSON**—I am entirely satisfied of the soundness of this decision. The empowering section (section 133), in virtue of which this assessment has been made, allows the County Council to assess the Hillside District for certain purposes. It seems to me that the opinions of Lord M'Laren and Lord Kinnear supply, in very few words, a complete answer to the only plausible argument of the appellant, and I intend to imitate their Lordships' brevity. The initial words beginning "where any" are satisfied by reference to the time of making the assessment and have no relation to the time when the expense assessed for has been incurred. The expense now in dispute is within the words, and I think it is also in accordance with the system of setting-up districts that it should be borne by the new district which has by those means obtained independence.

Their Lordships dismissed the appeal with expenses.

Counsel for the Appellant—The Lord Advocate (Shaw, K.C.)—B. A. Cohen. Agents—St Clair Swanson & Manson, W.S., Edinburgh—A. & W. Beveridge, Westminster.

Counsel for the Respondents—Horace Avery, K.C.—Adamson. Agents—J. & J. Galletly, S.S.C., Edinburgh—Grahames, Currey, & Spens, Westminster.

## COURT OF SESSION.

Thursday, June 7.

### FIRST DIVISION.

[Lord Johnston, Ordinary in Exchequer Causes.

#### INLAND REVENUE v. GIBB.

*Revenue—Income Tax (Schedule D)—Moneys Held by Person in Representative Capacity—List to be Furnished by Person not Himself Directly Chargeable—Whether Statement of Profits Necessary or merely Name and Address—Income Tax Act 1842 (5 and 6 Vict. cap. 35), secs. 42 and 51.*

The Income Tax Act 1842 provides, sec. 42, that in the case of a trustee or agent who is in receipt of profit, &c., belonging to another, and who is not himself directly chargeable with duty, it shall be sufficient if he delivers a list "in the manner hereinafter required of

the name and residence" of the persons entitled thereto.

Section 51 provides that every person who shall be in receipt of any money belonging to another for which such other person is chargeable shall "deliver in manner before directed a list in writing, in such form as this Act requires, signed by him, containing a true and correct statement of all such money, value, profits, or gains, and the name and place of abode of every person to whom the same shall belong. . . ."

A firm of underwriters on being asked to furnish a list in terms of section 51 of the Income Tax Act 1842 containing the profits due to their constituents, declined to do so, holding that under section 42 of the Act they were not bound to do more than furnish a list containing their names and addresses.

*Held* that the underwriters were bound to furnish the list called for containing the profits, section 42 being merely a proviso on preceding sections, and referring shortly to the list required by section 51 and not restricting the scope of such list.

The Income Tax Act 1842 (5 and 6 Vict. cap. 35) [after providing (section 41) for trustees and guardians of incapacitated persons being charged] enacts, section 42—"Provided always that no trustee who shall have authorised the receipt of the profits arising from trust property by the person entitled thereunto, or by the agent of such last-mentioned person, and which person shall actually receive the same under such authority, nor any agent or receiver of any person being of full age and resident in Great Britain, . . . who shall return a list in the manner hereinafter required of the name and residence of such person, shall be required to do any other act for the purpose of assessing such person. . . ."

Section 51 enacts—"Every person who shall be in receipt of money or value, or the profits or gains arising from any of the sources mentioned in this Act, of or belonging to any other person, in whatever character the same shall be received, for which such other person is chargeable under the regulations of this Act, or would be so chargeable if he were resident in Great Britain, shall within the like period prepare and deliver, in manner before directed, a list in writing in such form as this Act requires, signed by him, containing a true and correct statement of all such money, value, profits, or gains, and the name and place of abode of every person to whom the same shall belong, together with a declaration whether such person is of full age, . . . in order that such person, according to a statement to be delivered as herein mentioned, may be charged either in the name of the person delivering such list, if the same shall be so chargeable, or in the name of the person to whom such property shall belong, if of full age, and resident in Great Britain, and the same be so chargeable by this Act. . . ."

On 5th July 1905 Hugh Gibb, 109 Hope Street, Glasgow, acting or representative partner of the firm of Cayzer, Irvine, & Company, underwriters, Glasgow, was cited to appear to answer to an information by the Lord Advocate on behalf of His Majesty, under the Income Tax Acts, 5 and 6 Vict. cap. 35, 16 and 17 Vict. cap. 34, and 4 Edw. VII, cap. 7.

The information bore—"That Hugh Gibb, No. 109 Hope Street, Glasgow, acting or representative partner of the firm of Cayzer, Irvine, & Company, underwriters, Glasgow, the said firm being persons in receipt of money, value, profits, or gains of or belonging to other persons, and chargeable under Schedule (D) of the Income Tax Act, 16 and 17 Vict. cap. 34, for the year ending the 5th day of April in the year 1905, in terms of 4 Edw. VII, cap. 7, and being bound in terms of the Income Tax Acts, and in particular of section 51 of the Income Tax Act (5 and 6 Vict. cap. 35), to prepare and deliver to the proper person appointed to receive the same, at his office, a list in writing containing a true and correct statement of all such money, value, profits, or gains, and the name and place of abode or residence of every person to whom the same belonged, with relative declarations, has refused or neglected to deliver to . . . a list in writing containing a true and correct statement of all money, value, profits, or gains of or belonging to any other person and chargeable under Schedule (D) of the Income Tax Act 16 and 17 Vict. cap. 34, for the year ending the 5th day of April in the year 1905, in terms of 4 Edw. VII, cap. 7, and received by the said firm, and the name or place of abode or residence of every person to whom the same belonged, with relative declarations, contrary to the provisions of the Income Tax Act (5 and 6 Vict. cap. 35), and particularly of sections 51 and 55 thereof; whereby the said Hugh Gibb has forfeited the sum of £50."

Gibb pleaded not guilty and lodged defences.

In his defences he stated—"Cayzer, Irvine, & Company are steamship owners in Glasgow, but they also act as insurance brokers and underwriting agents under mandates authorising them to underwrite risks for a number of underwriters all resident in Great Britain. . . . Each of the said underwriters engaged in other trades, businesses, or concerns falling within Schedule D of the Income Tax Act 1842, and several of them are also engaged in other underwriting transactions through other agencies. The profits of said underwriters, which are chargeable for income tax, can be ascertained therefore only after there has been deducted or set off against the profits acquired in the said concerns, the excess of the loss sustained in any other of the said concerns over and above the profits thereof.

. . . No form is prescribed by the Income Tax Acts appropriate for making the return called for, and the sections of the statute founded on in the information are not intended to and do not apply to the case of the respondent. The business carried on by the said Cayzer, Irvine, & Company is

similar to that carried on in all cases of brokerage of every kind, where one person employs another to do business for him, on the understanding that the person employed accounts to the client for the profit, if any, arising from the client's own business. In such cases of brokerage section 51 of the Act has not been applied, and is not applicable."

The Lord Advocate lodged answers, in which he stated, *inter alia*—"On behalf of the underwriters for whom they act and take payment of premiums and to whom they are bound to account, Messrs Cayzer, Irvine, & Company are each year, and were in the year libelled, in receipt of money or value or profits or gains belonging to the said underwriters, and chargeable with income tax. . . . The notice which was duly given on 17th March 1905 by . . . was in a form prescribed and approved of by the Board of Inland Revenue. As provided by the Taxes Management Act 1880, notices of demand or other documents required to be used in assessing, charging, levying, and collecting duties are to be made out, drawn, and prepared according to forms prescribed and supplied or approved by the Board from time to time."

The defender pleaded—"On a sound construction of the sections of the statute founded on in the information, and in the circumstances condended on, the respondent is not bound to furnish the list required."

The nature of the list which the defender was called upon to fill up appears from the following excerpt:—

"Description of every person for whom the said firm act as Trustee, Agent, Receiver, Guardian, Tutor, Curator, or Committee in relation to profits arising from Trade, Profession, Foreign Possessions, and Securities, or other profits chargeable under Schedule D, viz.—

"First, Persons of full age and resident in the United Kingdom, or married women living with their husbands, in receipt of the profits:—

Names.	Place of Abode or Residence.	Amount of Profits.
		£

"I declare the profits of the above persons are chargeable on them respectively."

On 17th March 1906 the Lord Ordinary in Exchequer Causes (JOHNSTON) pronounced this interlocutor:—"Finds that the defender, as representing Messrs Cayzer, Irvine, & Company, is bound to deliver the lists demanded of the names of the persons for whom his firm conduct the business of underwriting in the manner described on record, with their addresses, but is not bound to include in such lists the amount of profit effecting to each: Accordingly dismisses the information as laid: Finds neither party liable in expenses, and decerns."

*Opinion.*—"Messrs Cayzer, Irvine, & Company, who are primarily shipowners,

but who also act as marine insurance brokers and underwriting agents in Glasgow, conduct a business in underwriting, the particulars of which are as follows:— A number of constituents grant them letters of authority under which each respectively authorises the firm 'to underwrite as my agent, in my name and for my account,' a sum not exceeding £ on each risk, and 'to sign for me and in my name the stamped policies of insurance,' and 'to adjust, compromise, and settle all losses, averages, returns, or claims arising thereon, and to defend at law or refer to arbitration disputed claims.' The letter of authority then concludes— 'You are to render me in the month of January in each year the usual statements of your underwriting transactions on my behalf, retaining such a sum in your hands as you consider necessary to provide for possible losses upon all risks, say an amount equal to three total losses, and crediting my account with the bank interest allowed for same.'

"Messrs Cayzer, Irvine, & Company were to receive a commission of 10 per cent. on any profit accruing from the account. And the authority was to remain in force till cancelled in writing, but Messrs Cayzer, Irvine, & Company might close the account at discretion.

"It is clear, therefore, that were a constituent of Messrs Cayzer, Irvine, & Company carrying on this business himself without their intervention, he would be liable to income tax under Schedule D, and there would be no difficulty arising from the peculiar character of the business in assessing him under the rule of *The Scottish Union and National Insurance Company v. Inland Revenue*, 16 R. 461.

"Further, I think that there can be no doubt that Messrs Cayzer, Irvine, & Company are the agents, in the sense of the Income Tax Acts, of each constituent for whom they act under the authority of the mandate above quoted.

"Now, the Inland Revenue, dealing with Mr Hugh Gibb as the representative partner of the firm of Cayzer, Irvine, & Company, on the assumption that the said firm are persons in receipt of profits or gains of or belonging to other persons, and chargeable under Schedule D of the Income Tax Act 1853 for the year ending 5th April 1905, and as such are bound in terms of the Income Tax Acts, and particularly of section 51 of the Income Tax Act 1842, to deliver to the assessor a list in writing containing a true and correct statement of all such profits or gains, and the name and place of abode of every person to whom the same belong, with relative declarations, have demanded from Mr Gibb such list, and he having refused to deliver the same they sue him for penalties under section 55 of the Income Tax Act 1842. On a consideration of the various sections of this statute I have come to be of opinion that Mr Gibb is bound to deliver a list of the persons, with their places of abode, on behalf of whom his firm acts in the manner above mentioned, but is not bound to include a statement of the profits or gains for which his firm are

accountable to each such person.

"There are a number of sections of the Act of 1842 commencing with section 40 which bear upon the duties incumbent upon agents under the statute, and I do not think that there would be much difficulty in solving the question submitted to the Court but for a discrepancy between the 42nd and 51st sections.

"Agents under the statute may be in two positions. Either they may be themselves chargeable to duty in place of the principal, or their principal may be himself directly chargeable. In the former case they must give the Inland Revenue such return of profits as the individual constituent would require to do, with a view to being assessed on his behalf. But in the latter case I think that their duty is limited to apprising the Inland Revenue of the fact of their constituent's chargeability in order that the Inland Revenue may see that their constituent makes the proper return with a view to his being himself assessed.

"Section 41 of the Income Tax Act 1842 provides for the case of persons under disability whose trustees or guardians, and of non-residents whose agents, are directly chargeable, and such trustees or guardians and agents must do everything required by the Act in order to the assessing of such persons to the duties granted by the Act.

"But section 42 provides that no agent of any person of full age, resident in the United Kingdom, and not under disability, 'who shall return a list in the manner hereinafter required of the name and residence of such person, shall be required to do any other act for the purpose of assessing such person,' unless the Commissioners shall require his testimony in pursuance of the powers and authorities given by the Act.

"I pass over the intervening sections, and come to section 51, which provides that every person who shall be in receipt of profits or gains 'arising from any of the sources mentioned in the Act, or of belonging to any other person, in whatever character the same shall be received, for which such other person is chargeable under the regulations of this Act,' shall deliver a list in writing, in such form as the Act requires, signed by him, containing a true and correct statement of all such profits or gains, and the name and place of abode of every person to whom the same shall belong, together with a declaration whether such person is of full age, or a married woman, or resident in the United Kingdom, or under disability, 'in order that such person, according to a statement to be delivered as herein mentioned, may be charged, either in the name of the person delivering such list if the same shall be so chargeable, or in the name of the person to whom such property shall belong if of full age and resident in the United Kingdom, and the same be so chargeable by this Act.'

"Now, if this section had stood alone there would have been no doubt that Messrs Cayzer, Irvine, & Company are in receipt of profits or gains arising from one of the

sources mentioned in the Act, of or belonging to other persons their constituents, and must deliver the lists demanded, not only of the names and addresses of such constituents, but of the profits or gains to which they are entitled, and that whether such constituents are *sui juris* and resident or not.

“But I cannot ignore the distinct statement of section 42, which, in the case of the *sui juris* and resident principal, limits the duty of the agent to giving the name and address of his principal.

“I think that the full measure of section 51 was really only intended for the case where the agent is directly assessable, and that it is limited by section 42, where the principal himself and not the agent is directly assessable. But whether this be so or not, the rule in interpreting a taxing statute in all its details is in favour of freedom from obligation unless it is expressly and clearly imposed, and I cannot say that that is expressly and clearly imposed as a duty which, though within the terms of one section, is within the exception of another section of the same Act.

“And though section 190, Schedule (G) XVI, is quoted in support of the Crown's contention, I think that it really supports my conclusion. For, after providing for the cases in which lists containing names and addresses only are required, it winds up with these words, as if providing for a special class of case within the general category, ‘and where any person before described is accountable for the duty to be charged in respect of the property or profits of others, such lists as aforesaid shall be delivered, together with the required statement of such profits.’

“I shall therefore find that Mr Gibb, as representing Messrs Cayzer, Irvine, & Company, is bound to deliver the lists demanded of the persons for whom his firm conduct the business of underwriting in the manner described, with their addresses, but is not bound to include in such lists the amount of profit effecting to each; and I shall accordingly dismiss the information as laid, finding neither party liable in expenses.”

The Lord Advocate reclaimed, and argued—Section 51 of the Income Tax Act 1842 declared that the list must contain a statement of profits as well as the name and residence of the person to whom the same belonged—Dowell's Income Tax Laws (5th ed.), pp. 50 and 51 (Note b, p. 51). Section 42 was a proviso to section 41, and merely absolved an agent who had given in a list “in the manner hereinafter required” from doing any other act. The words “from doing any other act” did not mean that they were not to fill in the profits as required by section 51. Section 41 referred to the case of an agent (1) for an incapacitated person, and (2) for a non-resident person. Such an agent had to stand in his principal's place, while section 42 referred to the case of an agent for persons *sui juris* and resident in Great Britain. Such agents were to be dealt with as agents and not as principals. Such agents were required by section 51 to insert

in the lists to be delivered a statement of the “money, value, profits, or gains” due to their principals as well as their names and addresses, but they were not required to do more, *e.g.*, to give testimony, unless called on to do so. *Vide* also section 190, Schedule G, rule 16 (3), (5); Dowell, *op. cit.*, p. 250. The form of Schedule G appended to the 1842 Act was taken from Schedule G annexed to the Act of 1806 (43 Geo. III, c. 65). The form used was that directed by the Taxes Management Act 1880 (43 and 44 Vict. c. 19), section 15 (2); *vide* Dowell, *op. cit.*, p. 325.

Argued for respondent—Profits in the hands of Cayzer, Irvine, & Company were in the same position as profits in the hands of a stockbroker. Cayzer, Irvine, & Company were really insurance brokers, and an insurance broker was not bound to give in a list of the profit due to his client. Section 100 of the Income Tax Act 1842 provided for the computation of the duty on profits; the duty was to be on the profit, not on the gross return. That being so, Cayzer, Irvine, & Company could not make the return required, as their clients alone knew whether their ventures had been profitable or not, and what was the average amount of their profit in view of their other transactions.

LORD PRESIDENT—Messrs Cayzer, Irvine, & Company, in addition to other business, act as underwriters, and they underwrite not only in their own name but also for certain other people under a form of contract between them, by which Messrs Cayzer, Irvine, & Company are constituted agents for those other people to the extent of binding them to any risk which to Messrs Cayzer, Irvine, & Company seems good, provided always that the sum of each individual risk is not to exceed a certain amount, and with certain other provisions as to the division of profits which may be made out of the business. Messrs Cayzer settle with these people for whom they underwrite, and at the end of the year they draw out a statement of the balance of profit and loss, and if there is a balance of profit they after retaining in their own hands for security a sum of money equivalent to what would have to be paid under three total losses, hand over the remaining surplus to the person for whom they underwrite under deduction of the commission which they stipulate for.

Now the Inland Revenue has asked Messrs Cayzer to give a list in terms of section 51 of the Income Tax Act of 1842. That section says that every person who shall be in receipt of any money or value, or other profits or gains arising from any of the sources mentioned in the Act, of or belonging to any other person, in whatever character the same shall be received, for which such other person is chargeable, shall within a certain period prepare and deliver a list in writing, in such a form as the Act requires, signed by him, containing a true and correct statement of all such profits or gains, and the name and place of abode of every person to whom the

same shall belong, together with a declaration whether such person is of full age and so on. Messrs Cayzer refused to give the list referred to in that section, conceiving that they were not bound to do so, and the Lord Ordinary has refused the demand of the Inland Revenue upon this ground. He holds that a list must be given, but that it is sufficient if that list contains the name and address without giving the profits. I cannot agree with the result which the Lord Ordinary has come to. It seems to me that the words of the statute are plain beyond all expression. There is no doubt that in this case Messrs Cayzer are in receipt of profits or gains arising from the sources mentioned in this Act, because it is the profits of a business or trade or vocation, namely, insurance underwriting, and they belong to some other person who may be chargeable under the Act, and accordingly the words of the section seem to apply directly. The only reason why the Lord Ordinary has refused the application to them is because of another section altogether, namely, section 42. Section 42 is a proviso upon the earlier sections before it. It provides for the case of a person who is not in the position in which other trustees who have been dealt with in the preceding sections have been put, namely, being himself directly chargeable with the duty; but if he has allowed the beneficiary to get the money, the statute says it shall be sufficient if he delivers a list in the manner hereinafter required, with the name and residence of such person. "In the manner hereinafter required" of course refers to the 51st section which I have just read. I think the mistake that the Lord Ordinary has fallen into is that he has taken the expression "of the name and residence of such person" as if it were a taxative expression instead of a merely descriptive expression. It seems to me that the policy of the statute is extremely simple. The furnishing of this list does not conclude the question whether the parties who get these profits will be assessed on their full value or not. They are assessed upon the value of their profits or gains. If the gentlemen who get the profits of the underwriting business are carrying on other business, the eventual return to the Inland Revenue will be on the result of these businesses taken together. This section gives the Revenue authorities a very valuable check upon such returns. The point was urged, that when you go to Schedule G, there is no actual column for profits, and therefore you could not be asked to make a return in that form. I think the Solicitor-General quite satisfied us that the historical reason for the schedule being in that form was that there had been a slip, that it had not been noticed that section 51 was a departure from the earlier section with which it corresponds, and that the proper alteration has not been made in the schedule.

I am for recalling the interlocutor of the Lord Ordinary and decerning in favour of the Crown.

LORD M'LAREN—I agree with your Lordship. It seems to me that section 51, which is the section founded on by the Inland Revenue Department, is broad enough to apply to cases of mercantile agency. It contemplates the case of an agent who is not himself chargeable for duty, but who has money in his hands, or passing through his hands, which is of the nature of profit due to the person for whom he acts. Under that section it is perfectly clear that the return which the agent delivers is a return which contains not only the names and addresses of the persons for whom he acts, but also the amount of profits which, according to his books, stands at the credit of that person or those persons. No Government or Parliament, probably, would ever think of asking for any other return from an agent than what he is able to furnish from his own books. Whether there be any deductions which the recipient of the profit is entitled to credit for, or whether on a balance of his whole transactions he has or has not made a profit for the year is a matter entirely outside the knowledge of the agent and with which he has no concern. All that is required of him is to give a return of the amount of profits or money in his hands. The Lord Ordinary, I think, is in agreement with the view which we take as to the construction of these clauses. But then he has come to the conclusion that it must be controlled by section 42. I may observe in passing that it is a very unusual thing to find clauses in an Act of Parliament controlled by a previous clause. That is not the general mode of construction of Acts of Parliament. Then there is this other general observation, that the return would be a very useless return to the Inland Revenue if it did not state what, if any, were the amounts of money belonging to the persons in question. When you come to look at section 42 it would seem to me, agreeing with your Lordship, that it is essentially a proviso upon a previous section—section 41. Section 41 deals with the case of persons who are chargeable with duty on profits which do not belong to themselves, but are only held by them for others in their representative capacity. Section 42, in contradistinction to section 41, provides for the case of persons who hold such profits, but who are not chargeable for those profits. There is a reference to subsequent clauses in the words "in the manner hereinafter mentioned." I should not think it in the least necessary to set out at full length all the particulars of how the profit was acquired. It is enough to clearly identify the amount, and no other provision can be found except in section 51. I think on a sound construction it means just the list prescribed in section 51 with its particulars, neither more nor less. As regards the argument founded on Schedule G, there is ample reference in all those clauses to Schedule G. What the statute sets out is sufficiently comprehensive to compel the attention of the person making the return to the particulars required to be filled

up according to his own conscience and judgment.

I agree with your Lordship that we ought in this case to sustain the contention for the Crown, and to hold that there has been a failure to make the necessary return.

LORD KINNEAR and LORD PEARSON concurred.

The Court pronounced this interlocutor:—

“Recal the said interlocutor: Find for the pursuer on the information No 2 of process, and that the defender as representing Messrs Cayzer, Irvine, & Company is bound to deliver the lists demanded of the persons for whom his firm conduct the business of underwriting, in the manner described, with the names and addresses of such persons, and to include in such lists the amount of profit effecting to each: Adjudge the defender to forfeit and pay to the pursuer the sum of £50, and decern: Find the pursuer entitled to expenses,” &c.

Counsel for Pursuer and Reclaimer—Solicitor-General (Ure, K.C.)—A. J. Young. Agent—Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for Defender and Respondent—Dean of Faculty (Campbell, K.C.)—R. S. Horne. Agents—Webster, Will, & Co., S.S.C.

Wednesday, June 13.

### FIRST DIVISION.

[Lord Low, Ordinary.

#### HOPE v. THE LASSWADE DISTRICT COMMITTEE OF THE COUNTY COUNCIL OF MIDLOTHIAN AND OTHERS.

*Local Government—Title to Sue—Parish Council—County Council—District Committee—Action to Determine Position of an Admitted Right-of-Way—Right of Parish Council to Take up Defence of Action—Local Government (Scotland) Act 1894 (57 and 58 Vict. cap. 58), secs. 29 and 42.*

A proprietor of lands brought an action against a District Committee of a County Council in order to have the position of an admitted public right-of-way determined. The District Committee did not defend, but the Landward Committee of the Parish Council of the parish in which the right-of-way lay sisted themselves as defenders. Held that the Landward Committee had no title, and that the right to litigate on such matters lay with the County Council and its District Committee.

*Expenses—Parish Council Sisted Defenders—Liability for Expenses from Lodging of Minute Craving Sist only—Action to Determine Position of Right-of-Way.*

The Landward Committee of a Parish Council sisted themselves as defenders to an action to determine the position of an admitted right-of-way within the parish, brought against the District Committee of the County Council who did not defend. Held that the Landward Committee, who were found to have no title, were only liable in expenses from the date of lodging the minute of sist.

The Local Government (Scotland) Act 1894, section 29, *inter alia*, enacts—“A parish council may repair and maintain all or any of the public ways (not being highways or footpaths at the side of a highway within the meaning of the Roads and Bridges (Scotland) Act 1878) within the parish, and the expense of such repair and maintenance shall be defrayed out of the special parish rate. . . .”

Section 42, sub-section 1, provides—“It shall be the duty . . . of a district committee . . . to assert, protect, and keep open and free from obstruction and encroachment, any right-of-way . . . which it may appear to them . . . that the public have acquired by grant, prescriptive use, or otherwise, and they may . . . for the purpose of carrying this section into effect, institute and defend legal proceedings and generally take such steps as they may deem expedient.”

Sub-section 2—“Where a parish council or any six parish electors of a parish have represented to the district committee, or where there is no district committee to the county council, that any public right-of-way within the district . . . has been or is likely to be shut or obstructed or encroached upon, it shall be the duty of the district committee, or, where there is no district committee, of the county council, if they are satisfied that the representation is well founded, to take such proceedings as may be requisite for the vindication of the right-of-way, and if the district committee refuse or fail to take proceedings in consequence of such representation, the parish council or the electors who made the representation, may petition the county council, and if the county council so resolve, the powers and duties of the district committee under this section, in relation to such right-of-way, shall be transferred to the county council.”

Sub-section 3 enacts—“Any expenditure incurred by a county council or a district committee thereof in connection with any legal or other proceedings, under the two preceding sub-sections or either of them, shall be defrayed out of the road rate for the district, or where a county is not divided into districts, out of the road rate for the county. . . .”

On May 5, 1905, Sir Alexander Hope of Craighall, Baronet, proprietor of the lands of Pinkie and others in the parishes of Inveresk and Newton and county of Midlothian, raised an action against the Lasswade District Committee of the County Council of Midlothian, as such District Committee and as representing the public interest, and also against the County Council